



LIVINGSTON EMPLOYER BREEZE

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To share or not to share....tips on getting tips

With summer time heating up, there are more service industry positions open. Waiters, waitresses, food servers, bartenders, bussers, cooks, and housekeepers, all have the ability to earn tips. What employers may not know is the law regarding tips; who gets them, how and when.

Starbucks in Boston is being sued for their tip policy, just days after being ordered to pay millions in a similar case. Starbucks has a policy of sharing tips with supervisors; the worker is claiming that it violates Massachusetts laws and that most of the service employees are paid less than minimum wage with the supervisors being paid higher wages. He also contended that the customers were giving the tips to the employees because they were the ones doing the actual work and the customers probably were not aware that supervisors shared in the tips. The previous lawsuit in California ruled that Starbucks must pay those barista's more than \$100 million in tips. Another lawsuit in New York has also been filed for \$5M for the same reason.

While I don't think anyone in Livingston will have to worry about paying those types of awards to workers, employers still need to be aware of the laws for Montana in regards to who gets tips, how and when.

The law reads:

1. Tips are the employees' to keep and may not be used by the employer to make up any part of the employees' wage.
2. General characteristics of tips. A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for him. It is to be distinguished from payment of charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, and generally he has the right to determine who shall be the recipient of his gratuity.
3. Payments which constitute tips. In addition to cash sums presented by customer, which an employee keeps as his own, tips received by an employee include, amounts paid by bank check or other negotiable instrument at par and amount transferred by the employer to the employee.

The value of tips received by an employee may not be used to meet Montana minimum wage requirement.

Employers can not dictate that tips are to be pooled together and shared by all employees. However, employees may create a policy requiring the pooling of tips; if this is done, the employer may enforce that policy. If an employee is hired and told about the tip pooling policy created by fellow employees, and that person does not want to participate they can survey the other employees to see if all employees are still in agreement to the tip pooling. If all employees still agree to pooling the tips, that employee is also required to pool their tips.

By Elizabeth A. Anderson

From March 2008 information	MT	U.S.
Unemployment rate/Non-seasonally adjusted	4.4	5.2
Area Unemployment Rates	<u>2007</u>	<u>2008</u>
Gallatin	2.5	3.1
Meagher	7.3	6.2
Park	3.9	4.6
Sweet Grass	1.7	1.9



Based on the facts below, how do you think the courts ruled?

ASSIGNMENT WOULDN'T HAVE MADE HER "HAPPY"

"So why didn't we give Estrella Lopez the manager's job in the Harrisville store?" HR director Sylvia Mancini asked district Manager Bob McElree. "She was qualified—more qualified than the person who got the job."

"She was a little more qualified," Bob said. "But I had to take other factors into account."

"Like what?" Sylvia asked. "I hope you're not going to tell me you considered the fact that Estrella's of Mexican descent."

"It's not that simple," Bob said.

Oh boy, Sylvia thought. "What does that mean?" she asked.

Fitting in

"It means I had to choose a person who would not only run the store efficiently, but also fit in with the Harrisville clientele and the personnel," Bob said.

"Let's face it, Harrisville isn't exactly a haven of diversity," Bob went on. "I thought it would be wiser to steer Estrella to a more urban location where she could be successful as a manager."

"Did you tell her she'd be 'happier' at another store?" Sylvia asked.

"I did," Bob said. "I was trying to look out for her welfare."

"One big problem," Sylvia said. "Estrella would have made more money in Harrisville, because the store does more business. Now she plans to sue us for racial discrimination."

Estrella did sue. Did she win?
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Incumbent Worker Training Grant Update

By Susan Hanken

The Montana Department of Labor and Industry (DLI) Incumbent Worker Training Grant (IWTG) pilot program has been a huge success this year. Approximately \$250,000 in grant funds was distributed to small businesses with 20 or less workers throughout the 13 counties within Region 4 of Montana Department of Labor and Industry. This pilot program was approved by the Legislature in 2007 designed to help Employers fund training for their existing full time employees that will directly and ultimately benefit the business.

Park County is one of 13 Counties within DLI Region 4. The Livingston Business Expansion and Retention (BEAR) Team recognized by the Governor's office of economic development, in charge of overseeing the approval and distribution of IWTG funds in Park County, interviewed 24 businesses who requested funds including those in the Trades, Retail, Healthcare, Insurance, Service, Administrative, Nonprofit, and Manufacturing industries. Since receiving funds 8 months ago, 53 full time workers in Park County have been trained in areas that had direct relationship to their occupations or crafts including industry specific training, business, and various computer software applications totaling \$35,000 in training costs plus assistance with travel.

Overall, the training of these incumbent workers has allowed the businesses to remain competitive, enhanced business productivity and efficiency, reduced employee turnover or enhanced employee wages.

Regionally, around 240 incumbent workers have received training through the IWTG pilot program costing an average of \$950 per full time worker. This is in sharp contrast to training grants available to businesses through other government agencies which have cost anywhere of \$2600 to \$5000 per employee to train.

Another \$250,000 will be allocated to Department of Labor & Industry Region 4 Counties starting next fiscal year on or after July 1, 2008. All funds must be disbursed and all training must be completed by the end of the fiscal year, on or before June 30, 2009. Businesses interested in receiving incumbent worker training grant funds are asked to submit an application to the Business Expansion and Retention (BEAR) program. The BEAR program will review all applications and approve fund distribution according to guidelines laid out within the grant. The grant requires that Employers match every \$4 of requested training funds with at least \$1 of employer funds that may include wages and benefits paid during the time that the training is taking place.

If the pilot incumbent worker training grant is successful again in fiscal year 2009, future funds may be allocated for all five Regions in Montana through the Department of Labor & Industry following the legislative session of 2009. If interested in submitting application for grant funds, contact Livingston Job Service by email: livingstonjsc@mt.gov or telephone: 222-0520 and ask for an application for the Incumbent Worker Training Grant. Applications are being accepted now.

By Gail Habener

Work Opportunity Tax Credit Program (WOTC)

If you hire an individual from a WOTC Target Group, your company could be eligible for up to \$9,000 in tax credits. The WOTC program is designed to assist individuals facing barriers to move into gainful employment. The credit is available to private, for-profit employers and the number of new hires who can qualify the employer is unlimited. This program encourages employers in the private sector to hire job seekers from one of the following targeted groups.

- ⊕ Qualified recipients Temporary Assistance to Needy Families (TANF)
- ⊕ Qualified Veterans
- ⊕ Qualified Ex-Felons
- ⊕ Qualified Designated Community Resident
- ⊕ Qualified Vocational Rehabilitation recipients
- ⊕ Qualified Summer Youths residing in an Empowerment Zone or Renewal Community
- ⊕ Qualified Food Stamp Recipients
- ⊕ Qualified Supplemental Security Income (SSI) Recipients
- ⊕ Hurricane Katrina Employee

To apply for certification, an IRS form 8850 (Pre-Screening Notice and Certification Request) must be completed **on or before the job is offered**, then must be **postmarked within 28 days of the employee's start date**. In addition to the IRS 8850, an ETA form 9061 (Individual Characteristics) must be completed and submitted on or after the employee's start date. Submit the required forms (8850 & 9061) to Christy Robbins, WOTC Coordinator at the address listed below.

Department of Labor & Industry
WOTC Unit
P.O. Box 1728
Helena, MT. 59624-1728

For additional information, contact Christy Robbins at (406) 444-9046, (800) 726-0615 or by e-mail at crobbs@mt.gov

Livingston Job Fest and 8th Grade Business After Hours a success!!

By Gail Habener and Susan Hanken

The Job Fest was held last April 23 at the Civic Center. Twenty-eight employers signed up for the 6 hour event. The Job Fest drew local employers as well as national and international employers coming to recruit the best and the brightest from Livingston!

Roughly 167 Job Seekers walked through the door and 54% of those were employed and looking for a better opportunity. The age group that had the highest attendance, thanks to the cooperation of Park High School, were the under 18 year olds and made up 24%. The age group of 18 – 30 year olds made up 22 % coming in second and the 41 – 50 year olds, 19%, in third place.

Thank you to all the Employers and Job Seekers for making this event a success. We, here at Job Service, look forward to next year's Job Fest. We have taken the suggestions Employers gave us on the survey and will be implementing some of those ideas!

On May 21, the Sleeping Giant Middle School hosted the first 8th Grade After Hours Career Awareness Event in order to educate the 8th graders about the world of work and career. Annette Miller from the Department of Labor and Industry Research and Analysis Bureau was the guest speaker on the future of our workforce. Professionals in Journalism, Computer Software Development, Photography, Construction, Banking, and Law Enforcement, to name a few of the 34 businesses who attended, were available to answer questions on education and work. Students and parents met with the employers, along with representatives from the Montana Apprenticeship Training Program, Student Assistance Foundation, Job Service, and the Department of Commerce Economic Development. Park High School Vice Principal, Bob Stevenson, hopes to bring the same event to the High School next year and open up this fantastic opportunity to learn about careers and the local businesses to all students in grades 8th through 12th and their parents.

DECISION—If You Were the Judge....

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Yes, the court said Estrella's racial discrimination suit was worthy of going to trial. This put the company in the position of settling the case, probably for six figures, or spending more time in court and money on legal fees.



Bob may have thought he was being solicitous of Estrella's interests. But it was a big mistake to tell her she'd be "happier" in a store with more minority customers and workers.

That comment was a dead giveaway of racial bias. The court called it "*a standard euphemism for refusing a job to someone of a different race from the people he would be associating with.*"

Avoiding this common complaint

Racial discrimination is still the No. 1 complaint under federal employment law. To steer clear of racial bias, supervisors should:

- Take only performance and other race-blind indicators into account when making personnel decisions.
- Avoid discussing the race or color of any employee, even in contexts that may seem harmless or sympathetic.
- Run personnel decisions past a second manager or, better, HR, before acting.

General Discrimination Information

By Elizabeth A. Anderson

In numbers released by the EEOC (Equal Employment Opportunity Commission), bias charges based on race are the most frequently filed claims, followed by sex discrimination and retaliation. Age, disability, national origin and religion, in order, were the next most common.

Pregnancy discrimination cases have been at record highs as well as the number of harassment cases filed by males. There has been a 9% increase in filing of discrimination cases which is the highest increase since 1993.

One note of interest is that retaliation cases are also at record levels. Employers need to be very careful in how they respond to a complaint as it

can be just as important as whether they discriminated in the first place. Some employers may win a discrimination case but lose regarding retaliation. In Fiscal Year 2007, EEOC received 26,663 charges of retaliation

discrimination based on all statutes enforced by EEOC. The EEOC resolved 22,265 retaliation charges in 2007, and recovered more than \$124 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

A 9% increase in filing of discrimination cases is the highest increase since 1993